

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

CHARLES MITCHELL, #1600589, §
Plaintiff, §
§
v. § 3:09-CV-1376-K(BK)
§
BRONC McCOY, et al., §
Defendants. §

ORDER

On May 13, 2010, Magistrate Judge William F. Sanderson, Jr., filed findings, conclusions and a recommendation that Defendants' motion for partial summary judgment be denied in part with respect to Plaintiff's false arrest and search and seizure claims, and that it be granted in part with respect to Plaintiff's official capacities claims against the police officers named as Defendants. On May 14, 2010, Defendants filed objections to the recommendation as it relates to Plaintiff's false arrest and illegal search and seizure claims. The District Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made, and **SUSTAINS** those objections.

Defendants Bronc McCoy, Jonathan Walker, and Brian Emerson request the court to find that Plaintiff Charles Mitchell's false arrest and illegal search and seizure claims are barred by the doctrine of *Heck v. Humphrey*, 512 U.S. 477 (1994). They contend Plaintiff's false arrest and illegal search and seizure claims call into question the validity

of his guilty plea conviction to unlawful possession with intent to deliver cocaine and, as such, are barred by *Heck*. The court agrees with Defendants' argument.

Based on the foregoing, the Court **REJECTS** Magistrate Judge Sanderson's findings, conclusions and recommendation with respect to Plaintiff's false arrest and illegal search and seizure claims, **ACCEPTS** his recommendation with respect to Plaintiff's official capacity claims, and **GRANTS** partial summary judgment for the Defendants (Doc. #47) on Plaintiff's false arrest claims, search and seizure claims, and official capacity claims.

The court **RETURNS** this case to Magistrate Judge Renee Harris Toliver, to whom this case was recently assigned, for pretrial management and for further proceedings on Plaintiff's excessive force claim against the Defendants in their individual capacities.

SO ORDERED.

Signed July 19th, 2010.


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UNITED STATES DISTRICT JUDGE